



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0075]

RIN 1625-AA00

Safety Zone; Tennessee River, Mile 463.5 to 464.5;

Chattanooga, TN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Tennessee River beginning at mile marker 463.5 and ending at mile marker 464.5, extending bank to bank. This safety zone is necessary to protect persons and vessels from the potential safety hazards associated with the Riverbend Festival fireworks. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Ohio Valley or designated representative.

DATES: This rule is effective from 10:30 p.m. until midnight on June 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0075]. To view documents mentioned in

this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Petty Officer James Alter, Marine Safety Detachment Nashville, U.S. Coast Guard; telephone (615) 736-5421, email James.R.Alter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Table of Acronyms

DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

#### A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to

authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b) (B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice and comment period is impracticable. In the future, the Coast Guard intends to publish this event as an annual fireworks display requiring safety zones in the schedule located at 33 CFR 165.801.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delay in the effective date will be contrary to the public interest. Immediate action is needed to ensure public safety in the vicinity of the fireworks launching area.

## B. Basis and Purpose

The Coast Guard is issuing this safety zone under the authority of 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5, and 165 Subpart C; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, collectively authorize the Captain of the Port to establish and define regulatory safety zones.

The Captain of the Port Ohio Valley is establishing a safety zone for the waters of the Tennessee River, beginning at mile marker 463.5 and ending at 464.5 to protect persons and vessels from potential safety hazards associated with the Riverbend Festival fireworks. The Riverbend Festival fireworks display takes place on the Tennessee River and is launched from the right descending bank at mile marker 464.0. Fireworks displays taking place on or over a waterway pose possible hazards to the marine traffic and spectators on the waterway during the display. The Coast Guard determined that a temporary safety zone is needed to protect life and property during the fireworks display.

## C. Discussion of the Final Rule

The Captain of the Port Ohio Valley is establishing a safety zone for the waters of the Tennessee River,

beginning at mile marker 463.5 and ending at 464.5.

Vessels shall not enter into, depart from, or move within this safety zone without permission from the Captain of the Port Ohio Valley or his authorized representative. Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Ohio Valley, or a designated representative. They may be contacted on VHF-FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. This rule is effective, and will be enforced, from 10:30 p.m. until midnight on June 15, 2013. The Captain of the Port Ohio Valley will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

This safety zone restricts transit on the Tennessee River from mile marker 463.5 through 464.5 and covers a period of one and a half hour period, from 10:30 p.m. through midnight on June 15, 2013. Due to its short duration and limited scope, it does not pose a significant regulatory impact. Broadcast Notices to Mariners will also inform the community of this safety zone so that they may plan accordingly for this short restriction on transit. Vessel traffic may request permission from the COTP Ohio Valley or a designated representative to enter the restricted area.

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies

under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,



the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that

do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone to provide safety for the spectators viewing the fireworks that are being launched on the Tennessee River at mile marker 463.5 in for a one and a half hour period on one day. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Instruction.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0075 to read as follows:

§ 165.T08-0075 Safety Zone; Tennessee River, Miles

463.5 to 464.5, Chattanooga, TN

(a) Effective date. This section is effective from 10:30 p.m. to midnight on June 15, 2013.

(b) Location. The following areas are safety zones: All waters of the Tennessee River, beginning at mile marker 463.5 and ending at mile marker 464.5.

(c) Enforcement periods. The safety zone described in paragraph (b) above will only be enforced from 10:30 p.m. until midnight on June 15, 2013. Additionally, mariners and other members of the public may contact the Coast Guard at 1-800-253-7465 to inquire about the status of the safety zone.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Ohio Valley or designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard assigned to units under the operational control of the USCG Sector Ohio valley.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Ohio Valley or designated personnel. U. S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated personnel.

(e) Informational broadcasts: The Captain of the Port Ohio Valley or designated personnel will inform the public through broadcast notice to mariners when the safety zone has been established and if there are changes to the enforcement period for this safety zone.

DATED: April 29, 2013

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L. W. HEWETT  
Captain, U.S. Coast Guard  
Captain of the Port Ohio Valley

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